

**D R A F T**  
**TEXT OF REGULATIONS**

**CALIFORNIA CODE OF REGULATIONS**  
**Title 4, Division 15, Article 2**  
**Charter School Facilities Program – Implementation of**  
**State Charter School Facilities Incentive Grant**

The following regulations are proposed to be adopted.

**Section 10175. Purpose**

This Article implements the California School Finance Authority's administration of the grant received under the U. S. Department of Education, State Charter School Facilities Incentive Grants Program, for the purpose of enhancing the Charter School Facilities Program, Education Code section 17078.52 et seq., which provides financing for school facilities for California charter school pupils.

Note: Authority cited: Sections 17179 and 17180, Education Code.  
Reference: Section 17180, Education Code.

**Section 10176. Definitions.**

For the purposes of this article, the words and phrases defined in section 17078.52 of the Education Code shall have the same meaning as described therein. In addition, the following words and phrases shall have the meaning as described below:

- (a) "Applicant" shall mean the charter school, the school district or educational management organization applying on behalf of a charter school for a grant under this article.
- (b) "Application" shall mean a completed application (Form CSFA 05-01, rev. 6/05), incorporated herein by reference, as defined and developed by the Authority and available on its Web site, and all other documents required to be submitted to the Authority.
- (c) "CBEDS Report" means the enrollment information provided through the California Basic Educational Data System (CBEDS) to the California Department of Education.
- (d) "Charter School" shall mean a school meeting the definition of a charter school in Education Code section 47600, et seq. and also meeting the federal definition of charter school as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 USCA section 7221(i)), as amended by the No Child Left Behind Act of 2001.
- (e) "Chartering Authority" shall mean the school district, county office of education or the State Board of Education that granted a school's petition to become a charter school pursuant to Education Code section 47605.
- (f) "Classroom-Based Instruction" shall have the meaning set forth in Education Code section 47612.5(e)(1).
- (g) "Free and Reduced Lunch" means the Free/Reduced Percentage as collected by the California Department of Education, based on data collected in October of each year.
- (h) "Grantee" means the California School Finance Authority, which will serve as the administrator of the grant and will make final award decisions.
- (i) "Low-income" shall refer to the percentage of pupils deemed to be eligible for free/reduced lunch as identified in the Free and Reduced Price meals data for the school on file at the California Department of Education, based on data collected in October of each year.

- (j) “Nonprofit Entity” means an entity that is organized and operated for purposes of not making a profit under the provisions of the Internal Revenue Code section 501(c)(3), or is organized and operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, section 5110, et seq.
- (k) “Program” means the Charter Schools Facilities Program, commencing with section 17078.52, et seq., of the Education Code.
- (l) “Subgrantee” means an Applicant awarded grant funds on behalf of a charter school.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Sections 17078.52, 17180, 47605, and 47612.5, Education Code.

### **Section 10177. Eligible Applicant**

Any Applicant shall be eligible to apply for a grant if all of the following conditions are met:

- (a) An approved charter has been awarded and is in place and current at the time of application.
- (b) The charter school is in good standing with its chartering authority and is in compliance with the terms of its charter at the time of application submission.
- (c) The charter school has completed at least one school year of instructional operations.
- (d) The charter school has not been awarded an apportionment through the State’s Charter School Facilities Program.
- (e) The charter school is not a current recipient of funding through this article.
- (f) At least eighty percent (80%) of the instructional time offered by the charter school shall be at the school site, and the charter school shall attain an average daily attendance rate of at least eighty percent (80%) based on the school’s most recent CBEDS report.
- (g) The charter school is established pursuant to Education Code section 47600, et seq., and also meets the federal definition of charter school as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 USCA section 7221(i)), as amended by the No Child Left Behind Act of 2001.
- (h) The charter school admits students by lottery in the event more students want to attend the school than the school can accommodate.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Sections 17078.52 and 17180, Education Code.

### **Section 10178. Eligible Costs**

- (a) Grant funds may be applied toward a charter school’s cost of rent, lease, mortgage or debt service payments for existing or new facilities or toward the purchase, design and construction costs of acquiring land and constructing or renovating a facility.
- (b) Grant funds must be used to pay current and future years’ cost of renting or leasing a facility, for up to a three-year period. Awards may not be used to reimburse a charter school for costs incurred for any school year prior to the year in which the grant is awarded. In addition to documented evidence of an existing lease, rent, mortgage or debt obligation, the Authority reserves the right to evaluate prior year’s facilities costs to determine eligibility for the current funding round.
- (c) Grant funds may not be used to pay for school facilities, owned or leased by a school district.
- (d) Grant funds must be expended and liquidated within the guidelines of this article and the State Charter School Facilities Incentive Grant Program.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code.

## **Section 10179. Maximum Grant**

- (a) Grant awards that are used toward the annual cost of rent, lease, mortgage or debt service payments for existing or new facilities shall be based on the following:
  - (1) Per-pupil facilities aid for charter schools which shall be awarded to subgrantees in an amount of seven hundred and fifty dollars (\$750) per unit of average daily attendance from the current or most recent CBEDS report submitted with the application, not to exceed seventy five percent (75%) of the annual eligible costs for which the applicant is applying.
  - (2) No individual grant may exceed two hundred and fifty thousand dollars (\$250,000) per year, with a maximum grant period of up to three years.
- (b) Grant awards that are used toward the purchase, design and construction, costs of land and facilities, shall be based on the following:
  - (1) Per-pupil facilities aid for charter schools which shall be awarded to subgrantees in an amount of one thousand dollars (\$1,000) per unit of average daily attendance from the current or most recent CBEDS report submitted with the application, not to exceed seventy five percent (75%) of the annual eligible costs for which the applicant is applying.
  - (2) No individual grant may exceed five hundred thousand dollars (\$500,000) per year, with a maximum grant period of up to three years.
- (c) Grant awards, for up to a three-year period, will be reserved and apportioned from funds available in the year that the subgrantee is awarded funding.
- (d) An organization comprised of more than one charter school may apply for more than one grant by submitting a separate application for each charter school.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code.

## **Section 10180. Application Submission**

- (a) Application for grant funds shall be made on a form prescribed by the Authority, and will be available on the dates noted below. The Authority will accept applications during the time periods noted. The Authority will not accept hand-delivered applications. Completed applications shall be submitted in triplicate to the Authority. Applications submitted after the final filing date for each funding round will not be accepted for review and will be returned to the applicant. Applications shall be considered complete and final as of the date submitted. No further information will be accepted after the submittal date for purposes of evaluating the application, unless otherwise determined by the Executive Director of the Authority. Review and evaluation of applications by staff shall be based solely upon the information contained in and submitted with the application at the time of filing, and supporting information obtained directly from other state and local agencies. For organizations with more than one charter school, a separate application shall be required for each charter school applying for a grant.
- (b) Applications for the first funding round will be available by July 1, 2005. The final date to submit applications will be August 1, 2005. Specific availability and deadline dates will be posted on CSFA's Web site no later than June 30, 2005.
- (c) Applications for all subsequent funding rounds will be available by January 15 of each year. The final date to submit applications will be March 1 of each year (or the first business day

thereafter if March 1 falls on a Saturday or Sunday). Specific availability and deadline dates will be posted on CSFA's Web site December 15 of each year, beginning December 2005.

Note: Authority cited: Sections 17179 and 17180, Education Code.  
Reference: Section 17180, Education Code.

### **Section 10181. Content of Application**

Completed applications and all attachments shall be submitted in triplicate to the Authority and shall include, but not be limited to, all of the following items.

- (a) Application (CSFA Form 05-01).
- (b) Copy of current charter agreement.
- (c) Copy of 501(c)(3)/Tax-Exemption Letter, if applicable.
- (d) Copy of the CBEDS report that was submitted for the most recent Information Day prior to application submission.
- (e) Documentation that the school is located in an over-crowded school district as defined in section 10182(b), if applicable.
- (f) Free and Reduced Lunch data for the applicant charter school.
- (g) Copy of lease contract, rental agreement or other documentation verifying required payments and evidence that the agreement terms match or exceed the anticipated grant terms.
- (h) Verification that the charter school is in good standing with its chartering authority, and complying with the terms of its charter (the Authority reserves the right to contact the charter authority directly seeking written verification that the school is in good standing and in compliance with the terms of its charter).
- (i) A completed Legal Status Questionnaire submitted in the form set forth in CSFA 05-01.
- (j) For construction projects only, a detailed description of the project, including timelines and other funding sources.
- (k) For construction projects only, proof of site control. Such proof may consist of (1) a current title report issued no more than 90 days prior of application showing ownership of the site; (2) an executed lease agreement or lease option for the length of time the project will be assisted by the Grant Program; or (3) a valid, current, enforceable contingent purchase and sale agreement or option agreement between the Applicant and the owner of the subject property, including evidence that all extensions are in place to keep the agreement current through the grant award date.
- (l) For construction projects only, evidence that there are no outstanding issues related to the California Environmental Quality Act and all required permits are in place.
- (m) Agreement and Certification. The applicant shall agree and certify under penalty of perjury to the following terms and conditions as a requirement of receiving any grant funds. The agreement and certification shall be executed by the charter school's executive director, principal, chair of the board, or another authorized individual and shall be included in the application.
  - (1) Applicant may be required to return all or a portion of the grant funds including any investment earnings if the applicant fails to use the funds as approved. In cases where the grant will fund architect, design, or engineering fees or land acquisition costs as part of a construction project, the applicant may be required to return all grant funds and any investment earnings if the Authority cannot determine the associated larger construction project has been completed, based on timelines provided within the application. Grant funds shall only be used by the subgrantee in the manner described in the application, unless the Authority approves a change in writing pursuant to section 10186.

- (2) The applicant's project and financial records are subject to audit and inspection by the Authority and the Bureau of State Audits.
- (3) Applicant has either disclosed all legal information as required in the Legal Status Questionnaire, or has no legal information to disclose.
- (4) Applicant will notify the Authority in writing at the time of project completion with evidence of completion included.
- (5) Applicant will provide all documents and information required by law and meets all necessary requirements prior to the release of any funds.
- (6) Applicant is required to immediately notify the Authority of any material change to the charter school's enrollment, student performance, charter status, or financial condition that occurs between the time of application and the time when the application has been approved.
- (7) For all construction projects, a copy of the executed construction contract and all required permits must be submitted no later than one year from the award date.

Note: Authority cited: Sections 17179 and 17180, Education Code.  
Reference: Section 17180, Education Code.

## **Section 10182. Evaluation Criteria**

Preference points will be calculated for all applications. An application shall receive preference points based on the total of (a), (b), and (c), up to a maximum of 100 points, as follows:

- (a) Low Income: Up to 40 points based on the percentage of pupils at the charter school meeting the definition of low-income. Preference points assigned shall be based on data collected by the California Department of Education in October of the most recent year prior to application submission. The following sliding scale will be used to determine the number of preference points:

<b>Percentage Receiving Free/Reduced Lunch</b>	<b>Preference Points Assigned</b>
5–15%	4
16-30%	8
31-39%	12
40-47%	16
48-55%	20
56-64%	24
65-73%	28
74-82%	32
83-92%	36
93%	36.5
94%	37
95%	37.5
96%	38
97%	38.5
98%	39
99%	39.5
100%	40

- (b) Overcrowded School District: Up to 40 points if the school district where the charter school is physically located is determined to be overcrowded. The Percentage Overcrowded is determined by dividing the district's remaining New Construction Eligibility by its current enrollment (round up) and multiplying the product by 100. The following sliding scale will be used to determine the number of preference points:

Percentage Overcrowded	Preference Points Assigned
2-9%	4
10-13%	8
14-16%	12
17-19%	16
20-22%	20
23-25%	24
26-33%	28
34-41%	32
42-49%	36
50% and above	40

- (c) Nonprofit Entity: If the School or entity operating the charter school meets the definition of a nonprofit entity, the application will receive 20 preference points.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Sections 17078.56 and 17180, Education Code.

### **Section 10183. Award Methodology**

- (a) In each funding round, staff shall rank the applications based on the scores received, with the highest score ranking first. In the event that more than one application has the same overall score, the application with the highest points in the low-income category will receive a higher ranking. If more than one application has the same overall score as well as the same low-income points, the application with the highest points in the overcrowded school district category will receive a higher ranking. If application of the tiebreaker described above results in more than one application still having the same ranking, applications with the earliest mailing date will be given preference.
- (b) If the application is not complete at the time of submission, the applicant will be notified and given a 24-hour period to provide the additional information. Failure to comply with the prescribed time period will result in a new date being assigned to the application for ranking purposes described above as of the date the additional information is received.
- (c) For each funding round, the Authority shall make an initial award for each application, taking into account the ranking of all applications, the total amount of funds requested and the total amount of funds available. In the event total funds requested exceed total funds available, the Authority shall allocate funds beginning with the application scoring the highest ranking, and then proceed with the next highest rank until all funds have been awarded.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code.

## **Section 10184. Approval of Grant and Notification of Subgrantee**

Allocations approved by the Authority at a regularly scheduled board meeting shall be awarded as grants to subgrantees. Subgrantees will be notified in writing within five (5) business days of the board meeting of the amount of the grant and the disbursement schedule.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code.

## **Section 10185. Obligation and Expenditure of Grant Funds**

Grant funds shall be used for the immediate needs of the designated project. Grant funds must be obligated and expended by the dates specified in the grant agreement. The funding period will be no more than three years, which means that all funds must be obligated no more than three years from when a grant is awarded and all funds must be liquidated no more than three years and 90 days from when the grant was awarded from the Authority.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code.

## **Section 10186. Approval of Grant Use Change**

The Authority may, on a case-by-case basis, consider a change in the use of the grant funds if the subgrantee demonstrates, to the Authority's satisfaction, that the change is consistent with the Program, the State Charter School Facilities Incentive Grant Program, and this Article.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code.

## **Section 10187. Grant Agreements.**

The terms and conditions of a grant shall be set forth in a grant agreement, which shall include, but not be limited to, all of the following terms and conditions:

- (a) The dates by which the grant funds must be legally obligated, expended and liquidated.
- (b) A provision that any unspent grant funds and any unspent investment earnings on such grant funds shall revert to the Authority.
- (c) Agreement to comply with this Article and federal requirements pertaining to the State Charter School Facilities Incentive Grants Program.
- (d) Agreement that the subgrantee will defend, indemnify and hold harmless the Authority and the state, and all officers, trustees, agents and employees of the same, from and against any and all claims, losses, costs, damages, or liability of any kind or nature, whether direct or indirect, arising from or relating to the grant and the project or the Program.
- (e) Agreement that the grant shall only be used for projects as described in the subgrantee's application and approved by the Authority.
- (f) Any audit provisions as required by the Authority and/or the U.S. Department of Education.
- (g) Applicants are required to notify the Authority, within 30 days, of any material changes to the charter school's enrollment, charter status, nonprofit status, financial condition, or scope of the project that occurs between the time of application and the time of completing the project and submitting the final performance report.

- (h) Current CBEDS are to be reported to the Authority within 30 days of each Information Day, until the time at which project completion and the final performance report is submitted.
- (i) In the event that the charter school's charter is not renewed or is revoked at any time during the grant period, the subgrantee will advise the Authority within 30 days of notification of such action, including providing the Authority with a copy of the document provided by the chartering entity notifying the charter school of such action.
- (j) All subgrantees are required to submit two copies of a final performance report within 60 days after the expiration or termination of grant support.
- (k) The format of all performance reports will be provided by the Authority and will include information requested by the U.S. Department of Education.
- (l) Any other provisions required by the Authority and/or the U.S. Department of Education.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code.

### **Section 10188. Release of Funds**

- (a) No grant funds shall be released until the grant agreement and supporting attachments have been provided to the satisfaction of the Authority.
- (b) Applicants will be afforded two options for disbursement of grant funds, depending on the use of the grant award. Under the first option, charter schools shall apply annual grant funds toward the annual costs of rent, lease, mortgage or debt service payments over a two-year period, if such costs are sufficiently documented to the Authority. Under the second disbursement option, charter schools have the choice of applying grant funds (equal to a two-year award) toward the upfront costs of acquiring land and constructing a new facility. Charter schools requesting the second option will be required to demonstrate a commitment toward the acquisition of a facility at the time of application. Such commitment may include, but not be limited to, verification of the charter school's possession of an option to purchase land and/or detailed project plans and drawings.
- (c) Grant fund awards shall be released on the dates listed in the grant agreement.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code.

### **Section 10189. Completion of Grant Funded Construction Project**

- (a) The subgrantee shall certify to the Authority that the project is complete and, to the extent not already provided to the Authority, provide supporting documentation as follows:
  - (1) Construction projects require documentation including, but not limited to, copies of the certificate of occupancy, final payment certification by the architect, final payment request from the contractor and corresponding copies of cancelled checks. If the subgrantee does not provide copies of cancelled checks, the subgrantee shall provide wire transfers, electronic fund transfers or other evidence acceptable to the Authority in lieu of copies of cancelled checks.
  - (2) Real property acquisition projects require a copy of the final closing statement with certification by the title company.
- (b) If the subgrantee fails to complete the project within the project period, the Authority may require remedies, including forfeiture and return of all grant funds and any accrued interest thereon to the Authority.



- (c) On a case-by-case basis, the Authority may extend the project period for extraordinary or unavoidable delays where the subgrantee can demonstrate that such delays occurred through no fault of the subgrantee.
- (d) The Authority reserves the right to conduct site visits to any charter school facility or project receiving a grant pursuant to this Article.
- (e) The Authority or Authority staff may seek third party verification regarding any and all applicable costs associated with the facility/project receiving a grant pursuant to this Article.

Note: Authority cited: Sections 17179 and 17180, Education Code.  
Reference: Section 17180, Education Code.

### **Section 10190. Audits and Conflicts of Interest**

- (a) The Authority and/or the Bureau of State Audits may conduct periodic audits to ensure subgrantees are using grant funds consistent with the requirements and the terms of the Program, the State Charter School Facilities Incentive Grant, and this article as approved. Subgrantees shall retain all documentation and financial data necessary to substantiate the purposes for which the grant funds were spent for a period of three years after the certification of completion of the project has been submitted.
- (b) Subgrantees must avoid apparent and actual conflicts of interest when administering grants from the U.S. Department of Education. Department regulations at 34 CFR 75.525(a) prohibit a person from participating in an administrative decision regarding a project if
  - (a) the decision is likely to benefit that person or his or her immediate family members; and
  - (b) the person is a public official or has a family or business relationship with the subgrantee.Section 75.525(b) provides further that a subgrantee may not permit any person participating in a project to use his or her position for a purpose that is – or gives the appearance of being – motivated by a desire for a private or financial gain for that person or for others.
- (c) When using federal funds to enter into a contract, a State or local entity receiving a grant must comply with 34 CFR 80.36. These standards require federal grant subgrantees to develop written procurement procedures and to conduct all procurement transactions in a manner that provides, to the maximum extent possible, open and free competition. No employee, officer, or agent of the subgrantee may participate in the selection, award, or administration of any contract supported by federal funds if a real or apparent conflict of interest exists.
- (d) When these funds are used for construction-related activities costing over \$2,000, such as constructing a school building, renovating an existing owned school facility, or making leasehold improvements, any laborers and mechanics employed by contractors or subcontractors on the projects assisted with these federal funds must be paid in accordance with prevailing wage requirements in the Davis-Bacon Act (40 USCA section 3142, et seq.).

Note: Authority cited: Sections 17179 and 17180, Education Code.  
Reference: Section 17180, Education Code.

### **Section 10191. Funding Contingency**

- (a) This grant program is contingent upon the receipt of funds in each budget period as scheduled by the U.S. Department of Education.
- (b) Continuing apportionments to subgrantees will be contingent upon the subgrantee's eligibility to receive such apportionments.

Note: Authority cited: Sections 17179 and 17180, Education Code.  
Reference: Section 17180, Education Code.